

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

ANITA G. FOX, DIRECTOR FOR THE
MICHIGAN DEPARTMENT OF
INSURANCE AND FINANCIAL SERVICES

Petitioner,
v.

Case No. 19-504 – CR

Hon. Wanda M. Stokes

PAVONIA LIFE INSURANCE
COMPANY OF MICHIGAN,

Respondent.
_____ /

**RESPONSE OF INDEPENDENT INSURANCE GROUP, LLC TO
LATEST RESPONSES (AS DEFINED BELOW)**

NOW COMES Interested Party Independent Insurance Group, LLC (“Independent”), through its attorneys Fraser Trebilcock, and Adams and Reese, and hereby submits this response timely filed in this case. Subsequent to Independent’s filing of the *Supplemental Post-hearing Filing of Independent Insurance Group, LLC* on January 30, 2020, three additional documents have been filed with this Court by other parties to these proceedings:

1. On February 4, 2020, Aspida Holdco LLC (“Aspida”) submitted to the Court its *Response of Aspida Holdco to Supplemental Post-hearing Filing by Independent Insurance Group, LLC* (“Aspida Response I”);
2. On February 11, 2020, Aspida submitted to the Court its *Further Response of Aspida Holdco to the 1/27/20 Supplemental Post-hearing Filing by Independent Insurance Group, LLC* (“Aspida Response II”); and

3. On February 11, 2020, the Michigan Rehabilitator (the “Rehabilitator”) submitted to the Court the *Rehabilitator’s Response in Opposition to Independent Insurance Group, LLC’s Supplemental Post-hearing Filing Regarding the Rehabilitator’s Plan of Rehabilitation* (the “Rehabilitator’s Further Response”).

Aspida Response I, Aspida Response II and the Rehabilitator’s Further Response are collectively referred to as the “Latest Responses”.

I. RATIONALE AND INTRODUCTION

In light of the Latest Responses, and certain assertions made therein, many of which are inaccurate and/or misleading, Independent submits this filing to the Court to correct the record.

In summary, the Latest Responses assert and/or request, as applicable, the following:

1. That certain actions by the management team of the NC Insurance Affiliates were permitted by the regulators. Independent responds in Section **II**, a below.
2. That Independent lacks standing to object to the Plan. Independent disagrees, for the reasons reiterated and further set forth in, Section **II**, b below.
3. That the goal of the Plan is to protect Pavonia’s policyholders, creditors and the public by separating Pavonia and ServiceCo from their ultimate owner, Lindberg, as well as from the financial troubles of the North Carolina Insurance Companies. Independent responds in Section **II**, c below.
4. That DIFS representatives handling the Form A Process have requested an *in camera* meeting about the confidential and privileged details of DIFS’ ongoing review. Independent responds in Section **II**, d below.

Affiliates were explicitly placed into rehabilitation due to regulatory concerns over the billions of loans these entities made to their non-insurance affiliates and, among other things, GBIG management was running the day-to-day activities of all of the NC Insurance Affiliates, including their investment activities. Independent has not laid anything at all at the feet of GBIG management. This is once again an attempt to distract the Court, and avoid accountability. GBIG management is responsible for its own actions, not Independent.

While there are many other aspects of Aspida Response I that Independent disagrees with, Independent does not want to burden the court's time with any additional response to the other items.

b. Independent has standing to object to the Plan.

The Rehabilitator states that Independent does not have standing to object to the Plan. Independent prefers not to burden the Court's time with having to re-read previously made arguments. For the reasons set forth in prior filings, Independent believes it has standing to object to the Plan. Should the Court decide that Independent does not have standing, it is nonetheless in the best interests of Pavonia's policyholders, creditors and the public for this Court to consider the information contained in this filing, just as the Court has considered the information previously submitted to it by Independent.

c. The Plan does not separate Pavonia from the NC Insurance Affiliates.

While Independent prefers not to burden the Court's time with having to re-read previously made arguments, Independent would like to respond to this matter re-raised by the Rehabilitator. The Rehabilitator states that "the goal of the Plan is to protect Pavonia's policyholders, creditors and the public by separating Pavonia *and ServiceCo* (bold/italics added for emphasis) from their

ultimate owner, Lindberg, as well as from the *financial troubles* (bold/italics added for emphasis) of the North Carolina Insurance Companies.” Rehabilitator’s Further Response, page 4.

Independent asserts that the MI-DIFSMI-DIFS’s primary concern should be for the interests of the policyholders, creditors and the public as it relates to the insurance companies under its regulatory oversight. The fact that the Rehabilitator states that the goal of the Plan is also to protect ServiceCo is telling. Without reiterating all of the details on this topic from prior filings, Independent reminds the Court that ServiceCo was transferred to Pavonia just prior to the filing of the Plan and that, prior to being intertwined by GBIG into Service Company and vice versa, Pavonia was able to operate on a stand-alone basis, with far less expenses and far less complexity than it is today.

Independent agrees that Pavonia should be separated and protected from Greg Lindberg, its federally indicted ultimate owner. Independent of course agrees that Pavonia *should* be separated and protected from the “financial troubles” of the NC Insurance Affiliates. However, Independent asserts that the Plan has not separated and protected Pavonia from the “financial troubles” of the NC Insurance Affiliates for the reasons set forth in prior filings. Independent further asserts that Pavonia should be separated from *all* of the troubles of the NC Insurance Affiliates, not solely its “financial troubles”, for the reasons and based upon the facts set forth in prior filings. Independent asserts that in order to achieve separation from the troubles and “risks” (see Ares initial response) of the NC Insurance Affiliates, it is logical and reasonable to separate Pavonia from the management team of the NC Insurance Affiliates. Independent, in an effort to respect the Court’s time, will not reiterate here all of the reasons why, and instead respectfully refers the Court to the prior filings.

Independent points out it is possible that, notwithstanding the factual information set forth in prior filings, there is some reason, as yet unknown to Independent, that the GBIG management team is not being held accountable for all that transpired with the NC Insurance Affiliates while indisputably under their direct supervision. However, Independent can only rely upon what it has been able to find and piece together, on its own and without any investigative authority, from a variety of public, complicated and often disparate sources involving the numerous interrelated and/or intertwined processes cited in prior filings and not reiterated here.

d. Independent requests that the Court either deny the Rehabilitator's request for an *in camera* meeting, or allow Independent to be present if such meeting is granted.

As mentioned in prior filings and reiterated in Section e immediately below in connection with the issue of delay, the Court cancelled a pre-hearing that all parties were invited to attend based on the objection of the Michigan Attorney General ("MI AG") which argued that the Court must precisely adhere to the schedule in the Order which did not expressly provide for a pre-hearing. Now, the Rehabilitator, the client of the MI AG, would like a closed-door private meeting with the Court just prior to the final hearing in these proceedings. As the saying goes, the Rehabilitator should not be permitted to "have its cake and eat it too". Just as the all-hands preliminary hearing was cancelled, this closed-door meeting should either (i) not be allowed to take place because the schedule in the Order does not expressly provide for it, or (ii) be allowed to take place but with Independent in attendance.

In its Response, DIFS refers generally to the confidentiality afforded to the Form A process, but neglects to advise the Court of two important facts: (1) that a Form A process and a Rehabilitation process are two entirely different processes, and by choosing Rehabilitation, the parties become subject to the Court's rulings and not its own; and (2) that MCL 500.222(7), not

cited by the AG, addresses examinations (by which term the AG refers to the pending Form A process), and provides specific exceptions to the general confidentiality afforded Form A proceedings. In such cases, after issuance of a report following an examination:

"If assurances are provided that the information will be kept confidential, the director may disclose confidential work papers, correspondence, memoranda, reports, records, or other information as follows:

- (a) To the governor or the attorney general.
- (b) To any relevant regulatory agency or authority, including regulatory agencies or authorities of other states, the federal government, or other countries.
- (c) In connection with an enforcement action brought under this or another applicable act.
- (d) To law enforcement officials.
- (e) *To persons authorized by the Ingham County circuit court to receive the information.* (bold/italics added for emphasis)
- (f) To persons entitled to receive the information in order to discharge duties specifically provided for in this act."

It, therefore, appears that the Court has the discretion to set terms on which certain otherwise confidential information may be shared, and the protections that should be required – be they by way of a non-disclosure agreement, or protective order – and that may be imposed on Independent in this case.

e. Independent is neither causing, nor benefitting from, any delay in the Pavonia proceedings.

The Buyer once again argues that Independent is causing delay in the Pavonia process, and that Independent benefits from this delay. As mentioned in prior filings, Independent was not, and still has not, been given the opportunity to conduct due diligence and submit a proposal for the acquisition of Pavonia, which it requested to do several months ago. As the MI AG stated in the last hearing, the DOJ claim needs to be resolved in order to finalize the Plan and the Form A process. To Independent's knowledge, the DOJ claim has not been resolved. In addition, the MI-DIFSMI-DIFS has not yet finished its Form A review. Independent therefore, is not the cause of any delay. Independent is no way benefitting from any delay. In fact, Independent is incurring costs as well that it prefers not to incur and Independent unequivocally prefers that these matters be resolved forthwith.

f. GBIG, not Independent, is responsible for the fact that Pavonia's costs continue to mount.

The Buyer continually attempts to distract the Court from the Seller's accountability and responsibility for Pavonia's costs. Pavonia's costs continue to mount because of the activities discussed in detail in prior filings, which indicate that GBIG dramatically, and in some ways inappropriately, increased Pavonia's costs after acquiring it.

Despite representations to the contrary, Independent believes that Pavonia itself does not need the massive new business infrastructure created by GBIG in order to satisfy Pavonia's obligations to its policyholders. Most of the GBIG infrastructure, it appears from public filings, relates to new business generated by the NC Insurance Affiliates, mostly CBLIC, and not Pavonia.

It is misleading to assert that Pavonia itself needs the GBIG infrastructure for “new business”. Independent asserts that Pavonia does not, in fact, need most of the GBIG infrastructure. GBIG and Ares are the parties that need/want most of the GBIG infrastructure for the new business that they want to generate for their own personal gain. The main reason that they need Pavonia is because they cannot use any of the NC Insurance Affiliates to generate new business, because those insurance entities, under the direct watch of the GBIG management team, were placed into rehabilitation and are statutorily insolvent due to activities for which they are directly responsible. Pavonia was doing fine before GBIG acquired it. DIFS prohibited Lindberg from doing the kind of affiliate transactions that caused the insolvency of the NC Insurers. Because of that foresight Pavonia was saved from enduring the same fate as the NC Insurers. It is because DIFS acted to prohibit affiliate transactions; it is not because of any actions of GBIG management.

Buyer stated in its prior filings that Pavonia is in healthy financial shape. The fact that Pavonia’s healthy financial shape is being negatively impacted on an ongoing basis by the excessive expenses charged to it by GBIG is in no way Independent’s fault. Independent is not the cause of any delay in these proceedings and Independent is not the cause of the excessive expenses being charged to Pavonia.

g. Independent has not defamed the members of GBIG’s Management Team.

Independent has defamed no one, and the Buyer should cease reaching legal conclusions and making threats, that are not based on fact, in an attempt to intimidate Independent, whom they have called an “insubstantial startup”. One notes with irony that Aspida, itself, is a startup, created for the sole purpose of acquiring the stock of Pavonia. And, despite the protests suggesting otherwise, it does not appear that Ares will become obligated to guarantee Pavonia's obligations or performance, nor will it put Ares' assets at risk. As Independent has continued to assert,

IV. INDEPENDENT'S PRAYER FOR RELIEF

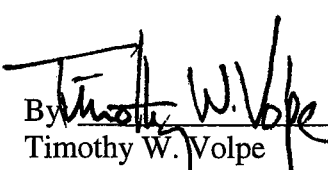

WHEREFORE, Independent respectfully prays that this Court enter an Order:

1. Providing Independent with timely access to due diligence information on Pavonia sufficient to enable Independent to submit its proposal for the acquisition of Pavonia.
2. Allowing Independent to submit a proposal for the acquisition of Pavonia.
3. Scheduling a hearing to determine what, if any, portions of the conference between DIFS and the Court will be *in camera*.
4. Allowing Independent, subject to confidentiality, to attend and participate in any judicial conferences regarding the Rehabilitation of Pavonia.
5. Ordering a mediation to resolve the issue raised with the Plan, with all of the Parties as participants.

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2020, a true and correct copy of the foregoing was served via hand delivery upon:

Clerk of the Court
Ingham County Circuit Court
341 South Jefferson Street
Mason, MI 48854

Hon. Wanda M. Stokes
Ingham County Circuit Court
341 South Jefferson Street
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